IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.4592/1998
M/s Ashok Trading Co. Vs. Krishi Upaj
Mandi Samiti, Sawai Madhopur

Date of Order :: 26 July, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri G. S. Bapna, for petitioner.
Shri Indrajeet Singh, for the respondent.

The petitioner has in this writ petition prayed that the priority list dated 18th August 1998 be quashed and has prayed for a further direction upon the respondent for allotment of shop to him in terms of priority list earlier prepared on 29.02.1996.

Factual matrix of the case is that the petitioner is engaged in the trade of agriculture produce since 1991 holding wholesale trading license issued on

06.02.1991. The respondent- Krishi Upaj Mandi Samiti (hereinafter referred to as 'Mandi Samiti') decided in the year 1995 to construct 72 shops for existing traders. As per criteria originally laid down, a priority list of such traders was prepared on 29.02.1996 in which the name of the petitioner appeared at serial No. 65. As per original decision, such newly constructed shops were to be offered to those appearing in the aforesaid priority list. However, the respondent later changed the criteria of allotment and cancelled the said list. Accordingly, the respondent vide notice dated 21.7.1997 invited fresh applications up to 11.08.1997. The petitioner also applied on 18.08.1998. A provisional list of proposed allottees was again prepared, in

which the name of the petitioner was shown at serial No. 91. The petitioner filed his objection to the preparation of this new list on 21.08.1998 in respect of 27 persons asserting that they were not genuine traders. Objections were filed by others too on 31.08.1998. The petitioner demanded copy of the revised criteria/guidelines and submitted that the list originally prepared on 29.2.1996 be acted upon and criteria may not be revised. It is in this backdrop that the present petition has been filed with the prayer abstracted above.

I have heard Shri G.S. Bapna, learned counsel for the petitioner and Shri Indrajeet Singh, learned counsel for the respondent.

Shri G.S. Bapna, learned counsel

for the petitioner argued that the respondent introduced the revised criteria and arbitrarily prepared another list on that basis, which was violative of Article 14 and 19 of the Constitution of India. The existing traders are statutorily bound to trade only from a notified grain yard. They had a preferential right to secure allotment of shops. The respondent could not in the midstream revise the criteria and open the field for fresh traders, who in fact had not been carrying on trade in the Mandi before the earlier list dated 29.2.1996 which was prepared for allotment of 78 shops and 26 plots and the petitioner was entitled to secure allotment of shop within the number of 72 as his priority/merit in that list was at serial No. 65. Shri G. S. Bapna relied

upon the judgment of Hon'ble Supreme Court in Labhram & Sons and others Vs. State of Punjab (1998) 5 SCC page 207 and argued that in view of law laid down by the Apex Court, the subsequent list prepared by the respondent dated 18.08.1998 is liable to be set aside and allotments are required to be made as per the original list dated 29.02.1996.

On the other hand, Shri Indrajeet Singh, learned counsel for respondent opposed the writ petition and argued that the Mandi Samiti had decided to construct 72 shops under a project as per available finances in the first phase and 26 plots were earmarked for construction of shops in second phase. Although earlier, a provisional list was prepared but before completion of construction of shops, the

contractor who was awarded the contract for construction thereof, left the work in between and the work was then awarded to another contractor. Resultantly, there was a delay of about two years. In the meantime, the Director, Agriculture Marketing Department, Jaipur by his letter dated 17.7.1997 instructed the Mandi Samiti to cancel the earlier proceedings of allotment and start new process by inviting fresh applications. Accordingly another notice was issued in the newspaper on 21.07.1997. It was argued that no one could be debarred from applying for allotment of shops. Since in the new list the name of the petitioner was appeared at serial No. 91, he could not be allotted shop because the respondent had only 72 shops. It was submitted that subsequently

the Directorate of Agriculture Marketing Committee vide letter dated 22.09.1998 decided to allot shops and not plots to the traders from outside the mandi area. The representation of the petitioner was received and same was forwarded to the allotment committee. He however could not point out as to what decision has been taken on the said representation. It was argued that the list subsequently prepared on 18.8.1991 was perfectly valid and justified. It was therefore prayed that the writ petition be dismissed.

I have given my thoughtful consideration to the aforesaid arguments advanced by learned counsel for the parties and perused the material on record.

Issue which has been raised in the

present petition essentially pertains to the right of the existing license holders, trading in the agriculture produce. On facts that are admitted, it appears that when the priority list was originally prepared on 29.02.1996, 78 names were included, in which the name of the petitioner figured at serial No. 65. The respondent had only 72 shops and, therefore, if allotment of the shops as per the priority list then would have been made, the petitioner was entitled to allotment of shop. Inspite of the specific plea of the petitioner, the respondent has not come out in the reply to the writ petition with the satisfactory explanation as to why the earlier process was canceled and new process was started. They have not alleged any irregularity in the process

earlier initiated in pursuance to which the aforesaid priority list dated 29.2.1996 was prepared. The only reason that has been cited is that since there was delay of about two years in construction of the shops owing to change of contractor, the Agriculture Marketing Directorate in the meantime ordered for cancellation of earlier proceedings and starting fresh process so as to complete it within two months. But no reason has been disclosed even in the letter dated 17.7.1997 as to why the earlier process was canceled. Only reason, as aforestated that has been cited for cancellation of the earlier process does not stand judicial scrutiny. Hon'ble Supreme Court in Labhram, supra, has categorically held that the Government has an inherent

obligation to provide all license dealers sufficient accommodation for their trading but such obligation could not be discharged merely by allowing them to compete with outsiders. The respondent although in the notice dated 21.7.1997 invited fresh applications from the licensees, but have not able to explain as to what fault was found with the earlier process. On consideration of these facts, this court while issuing notices to the respondent by its order dated 01.02.1999 directed the respondents to keep one shop vacant for the petitioner.

In the facts and circumstances, when it is held that the validly prepared priority list pursuant to earlier process was arbitrarily cancelled without any reason or rhyme and amounts to colourable

exercise of power. Action of the respondent has certainly negatived the petitioner's right to trade guaranteed under Article 19 (1) (g) besides being violative of Article 14 of the Constitution of India.

Resultantly, the writ petition is allowed and the cancellation of earlier priority list dated 29.02.1996 only to the extent of and in so far as the petitioner is concerned is set aside and the petitioner is held entitled to allotment of a shop as per originally prepared priority list at serial No. 65. There shall be no order as to costs.

(Mohammad Rafiq),J.

DJ/-